IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.102 OF 1994.

Ajit Singh Harnam Singh : Appellant.

versus

Shri Ram Pat Ram Sutarade

& Anr. : Respondents.

Mr.K.S.Patil, advocate appointed as Amicus Curie, for the appellant.

None for the respondents.

CORAM : D.G.DESHPANDE,J.

DATED : 7th February 2005.

ORAL ORDER

1. Heard advocate for the appellant who was appointed by me as Amicus Curie with consent of the appellant. Nobody is present for the respondents. The appellant was the original plaintiff who had filed a suit for possession against respondents. This suit was specifically

in respect of Room No.1 House No.2680 (9). It was the case of the plaintiff that in respect of this Room No.1 he had filed suit against the respondents in the Court of Small Causes and the decree came to be passed in his favour. The decree was executed, the appellant got the possession, but to his surprise the appellant found that in his absence the defendants re-entered the suit premises. The appellant lodged a complaint to the police. But the police did not interfere because the matter was of civil nature. Therefore, he filed the present suit before the City Civil Court vide S.C. Suit No.2296 of 1983. The suit was opposed by the respondents on the ground that they were the tenants. The trial Court framed as many as eight issues which are as under :-

(1) Do the Defendants prove that the suit is not maintainable for the reasons alleged in para No.1 of the Written Statement ?

(2) Do the Defendants prove that the suit is barred by law of Limitation as alleged in para No.2 of the Written

Statement?

(3) Do the Defendants prove that this Hon’ble Court has no jurisdiction as alleged in para 3 of the Written Statement ?

(4) Do the Defendants prove that the subject matter of the suit has not been properly valued ?

(5) Do the Defendants prove that the suit property is covered under the provisions of Vacant Lands Act and Maharashtra Slum Clearance Act and hence, the suit is not maintainable in this Court ?

(6) Does the Plaintiff prove that he was dispossessed from the suit premises as alleged in para No.4 of the Plaint?

(7) Does the Plaintiff prove that the defendants are trespassers in respect of the suit premises and they have no right title or interest as in the suit

premises?

(8) Is the plaintiff entitled to the Declaration as prayed in prayer (a) of the Plaint ?

and the findings of the lower Court on the aforesaid Issues are as under :-

(1) No (2) No

(3) Yes, it is proved that this Court has no jurisdiction.

(4) Negative (5) No

(6) No (7) No

(8) No

2. Counsel for the appellant contended that the trial Court has confused the matter because as per the plaint the suit of the appellant was specifically in respect of Room No.1 and not in respect of Room No.3. Whether the defendants

were the tenants of Room No.3 was of no consequence because of the peculiar case of the appellant in respect of Room No.1. Further he contended that he has produced documentary evidence on record that he had filed the suit against the respondents in respect of Room No.1 in the Small Causes Court vide R.A.E Suit No.5073 of 1977. That suit was decreed and in execution of the said decree he got the possession. Counsel for the appellant showed to me the possession warrant issued by Small Causes Court. That was in respect of Room No.1 House No.2680(9) situated at Kandivli. I have also perused the plaint.

3. It is clear that the suit was in respect of Room No.1. The relationship of landlord and tenants had come to an end by virtue of the decree against the defendants and possession has also ceased to be that of the defendants when the decree was executed and the plaintiff was placed in possession. Therefore, admittedly, when the plaintiff/appellant filed this present suit vide S.C. Suit No.2296 1983 the respondents - defendants were the trespassers. However, the trial Court did not at all consider this

important aspect and without any cogent and convincing reasoning accepted the case of the defendants though it was in respect of Room No.3. Clearly this is an illegality and irregularity committed by the trial Court. The judgment of the trial Court can not be, therefore, sustained nor maintained. Hence the appeal is required to be allowed and I pass the following order:-

:ORDER:

The appeal is allowed. The judgment and decree of the trial Court is set aside.

The claim of the appellant/plaintiff in the suit for possession in respect of Room No.1 House No.2680(9) is allowed with costs through out.

Inquiry for mesne profit from the date of the suit till possession against the defendants as provided under Order 21 of the Code of Civil Procedure.

The claim of the plaintiff before the trial Court that the defendants are the

trespassers is also granted.

Certified copy expedited.

[D.G.DESHPANDE]

07/02/2005 JUDGE.